

SEP 9 - 1942
I. SCHALLING

• • • • •

1 3. On September 8, 1982, I was notified that a
2 keeper had been installed at Cinematronica, Incorporated
3 pursuant to my instructions.

4 4. Subsequently, on September 8, 1982, I was con-
5 tacted by counsel for defendant, Ralph Pray, Esq., who
6 demanded that we withdraw the keeper forthwith or Chapter XI
7 proceedings would be instituted.

8 5. Later in the day of September 8, 1982, I was
9 notified by additional counsel for defendant, J. D. Hanson,
10 that an ex-parte hearing on a motion to Set Aside Writ to
11 Attach Order would be held in Department 12 of this Court at
12 4:00 p.m. on September 8, 1982.

13 6. At 4:00 p.m. on September 8, 1982, I appeared
14 at the ex-parte hearing wherein the matter was scheduled for
15 further hearing on September 9, 1982, at 3:00 p.m. in
16 Department 12 of the above-entitled court.

17 7. I have had insufficient time to obtain written
18 declarations from the parties involved in this case. I have
19 participated in telephone conversations with James P. Cesped,
20 Senior Vice-President of plaintiff, and with W. J. Gonzales,
21 manager of plaintiff's Los Angeles office which handled the
22 import transactions in this case.

23 8. Based on information provided to me by these
24 individuals, I am submitting this declaration to this Court.

25 9. The reason for my declaration in lieu of
26 declarations of parties with first-hand knowledge is that
27 less than 24-hours notice was given of this hearing.
28

1 10. Both Mr. Cesped and Mr. Gonzales have informed
2 me in telephonic conferences on September 8 and September 9,
3 1982, of the following facts set forth in the ensuing numbered
4 paragraphs of this declaration (pars. 11 through 24).

5 11. Both James P. Cesped and Will J. Gonzales attended
6 the meeting at Cinematronics, Incorporated on June 29, 1982.

7 12. At the time of the meeting, Cinematronics,
8 Incorporated was indebted to plaintiff in the amount of
9 \$97,807.13. The terms of agreement by which Cinematronics,
10 Incorporated had agreed to pay plaintiff as indicated in the
11 verified complaint and declarations previously on file in this
12 matter indicated that payment was to be made upon presentment
13 of invoice, and in no event later than 15 days following
14 presentment of invoice.

15 13. As of the June 29, 1982, meeting, no payments
16 had been made on the Cinematronics' account to plaintiff
17 later than April 22, 1982.

18 14. Defendant's account was, therefore, seriously
19 in arrears as of June 29, 1982, which was the reason for the
20 meeting.

21 15. The immediate payment of \$10,000, therefore, on
22 June 29, 1982, was merely a partial payment on a pre-existing
23 debt.

24 16. No understanding was reached as to additional
25 payments in excess of the pre-existing debt or interest on
26 said payments at the June 29, 1982, meeting.

27

28

1 17. No other consideration was offered or received
2 in consideration for plaintiff's representation that collection
3 efforts would be forestalled for a period of time.

4 18. In this meeting, Jimmie Pierce, Corporate
5 President of Cinematronics, Incorporated, made the following
6 representations: That the \$10,000 paid was an act of "goodwill"
7 and not consideration for the extinguishment of an old obliga-
8 tion; the debt would be paid; that Mr. Pierce was better at
9 turning around businesses in trouble than in operating
10 businesses which were not in trouble; that the officers of
11 the corporation had cut back on personal expenses; that no
12 salaries were being paid to corporate officers; that the
13 problem contributing to the difficulties Cinematronics was
14 undergoing was that the previous corporate president had made
15 drastic errors in judgment in purchasing three million dollars
16 worth of electronic equipment from Japan on an uncertain game
17 whereas the corporation had never before extended itself in an
18 amount more than \$100,000 for similar endeavors; that the
19 bank was secured in its loans to defendant to the extent of
20 some 2.2 million dollars and that the bank was threatening
21 "foreclosure"; that only two of Cinematronics' creditors had
22 cash involved, that McGregor Sea & Air Services (America) Inc.
23 was one, and that payments would be made; that next to payroll
24 and rent, McGregor Sea & Air Services (America) Inc.
25 (hereinafter MSAS) was first in line; that if any inventory
26 was sold, as opposed to receivables "trickling" in that cash
27 payments would be made to MSAS; that Cinematronics had approxi-
28 mately 2.2 million dollars in receivables out; that Cinematronics

1 had a one million dollar inventory on hand. Following the
2 meeting on June 29, 1982, and subsequent thereto, plaintiff
3 has learned the following through representations made to
4 plaintiff by defendant: The bank is not in a secure position
5 but is an unsecured creditor; sales of inventory have occurred
6 with cash generated but no payments have been made to MSAS;
7 large numbers of personnel have been released from employment
8 whereas only a small amount had been released prior to the
9 June 29, 1982, agreement according to representations made by
10 defendant; that Security Pacific National Bank is in the
11 process of "calling" its 3.2 million dollars in outstanding
12 loan obligations.

13 19. Based on the information received as referenced
14 in the proceeding paragraphs, on August 6, 1982, plaintiff
15 advised defendant that it was unable to adhere to the under-
16 standing arrived at, at the June 29, 1982, meeting based on
17 new information which had developed and based on misrepresenta-
18 tions which had been made previously.

19 20. Cinematronics at no time has offered to make
20 further payments on the outstanding obligation which it
21 acknowledges does exist by virtue of the "account stated"
22 contained within the Jim Pierce letter dated June 29, 1982
23 attached to defendant's application for its requested order.

24 21. Plaintiff only seeks to attach assets which
25 "clearly exceed the amount necessary to satisfy the amount to
26 be secured by the attachment." This was the order sought in
27 the ex-parte application for right to attach and the order
28 granted by this Court.

1 22. On September 9, 1982, an official of the Marshal's
2 office in El Cajon informed me that the "equipment of a going
3 business" levy was mailed to the Secretary of State on
4 September 7, 1982, the levy on the motor vehicles was mailed
5 to the Department of Motor Vehicles on that same date. The
6 bank account under levy of attachment and promissory notes under
7 levy of attachment involve ten day response times from the
8 persons noticed. Notices went out on the latter two matters
9 on September 8, 1982. No report has yet been received from the
10 keeper installed at the premises. Plaintiff is unable to
11 establish at this point in time whether or not the assets
12 currently under attachment are "clearly sufficient to secure
13 the debt."

14 23. This declaration was dictated at 1:36 p.m. on
15 September 9, 1982.

16 24. Further information will be provided to the
17 Court at the time of the hearing on this matter at 3:00 p.m.

18 I declare under penalty of perjury that the foregoing
19 is true and correct.

20 Executed this 9th day of September, 1982 at
21 San Diego, California.

22
23 C. BRADLEY HALLEN
24
25
26
27
28